



12 AUG 2003

David S. Harper
McDonnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
Suite 3200
Chicago, IL 60606

In re Application of	:	
KREBSFANGER, Niels et al.	:	
Application No.: 10/018,320	:	DECISION ON
PCT No.: PCT/DE01/00597	:	
Int. Filing Date: 15 February 2001	:	PETITION
Priority Date: 14 March 2000	:	
Attorney Docket No.: 01-1637	:	UNDER 37 CFR 1.181
For: STABLE EXPRESSION OF	:	
POLYMORPHIC FORMS OF HUMAN	:	
CYTOCHROME	:	

This decision is in response to "Petition Under 37 C.F.R. 1.137(a)," filed with the United States Patent and Trademark Office on 31 January 2003.

BACKGROUND

On 15 February 2001, applicant filed international application PCT/DE01/00597. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 20 September 2001. Accordingly, the twenty month period for paying the basic national fee in the United States expired on 14 November 2001.

On 12 November 2001, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 31 January 2002, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required and that the sequence listing contained in the application did not comply with 37 CFR 1.821-1.825.

On 09 January 2003, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned.

On 31 January 2003, applicants submitted the instant petition.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Practitioner indicates that he did not receive the Notification of Missing Requirements. Applicants assert that they have searched the docket records and there is no indication that the Notification was received.

However, applicants have not supplied the docket records for the firm on the day on which a response to the Notification would have been docketed. Rather, applicants have supplied the firm's correspondence log and the docket record for the individual application. Neither is acceptable.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

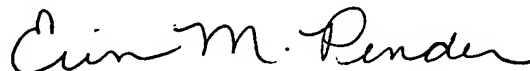
If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Application remains **ABANDONED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Leonard E. Smith
PCT Legal Examiner
PCT Legal Administration



Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459